

<sup>3</sup> ALJ Order for Compensation (Apr. 21, 2010).

when claimant failed to prove her injuries were causally related to an accident arising out of and in the course of her employment with the respondent. Third, the respondent alleges claimant did not establish that she was temporarily and totally disabled.

Claimant requests the Board affirm the ALJ's preliminary hearing Order for Compensation, arguing that she met her burden of proof that an accidental injury occurred and that the injury arose out of and in the course of her employment with the respondent. Claimant also argues that the ALJ had jurisdiction to award temporary total disability compensation and to order payment of medical expenses. Finally, claimant argues the ALJ had the jurisdiction to order claimant be held harmless for portions of unpaid medical expenses because such relief is couched in the terms of K.S.A. 44-510h.

The issues for the Board are:

- Whether the ALJ exceeded his jurisdiction by determining claimant was temporarily and totally disabled.
- Whether the ALJ exceeded his jurisdiction by awarding claimant temporary total disability compensation above the maximum allowed.
- Whether the ALJ exceeded his jurisdiction by ordering claimant to be held harmless for portions of unpaid medical expenses.
- Whether claimant sustained an accidental injury arising out of and in the course of her employment with the respondent.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds and concludes:

Claimant worked for respondent troubleshooting durable medical equipment claims over the phone.<sup>4</sup> She worked the 7 a.m. to 3:30 p.m. shift. Claimant is alleging injuries arising from a June 22, 2009 incident while working for respondent. At the April 20, 2010 preliminary hearing, the ALJ summarized the following as claimant's testimony from the October 20, 2009 preliminary hearing with regard to the alleged June 22, 2009 accident: "[T]he outside temperature was over 100 degrees. She said the building was sealed. There was no air. We had computers. We all sat there. There was *[sic]* computers everywhere. Had a small fan that was on me, but it was blowing hot air. Her mouth

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<sup>4</sup> P.H. Trans. (April 20, 2010) at 7.

became completely dry, had a hard time talking. Ran out of water. We were not allowed to leave the building. Had lunch between 11:15 until noon and that was break. She got extremely dehydrated, became dizzy and weak, didn't get any water."<sup>5</sup>

Claimant testified that during the evening of June 22, 2009, she experienced extreme dizziness, extreme weakness in her extremities and a very dry mouth.<sup>6</sup> Claimant returned to work on June 23, 24 and 25, although she was weak and experiencing dizziness.<sup>7</sup> Late in claimant's shift on June 25, claimant's supervisor called claimant in to her office and instructed claimant to call her doctor and make an appointment for the next day.<sup>8</sup>

Claimant was seen by Dr. Stephanie Suber, Family Medicine Associates, P.A., on June 26, 2009.<sup>9</sup> Dr. Suber assessed claimant with dehydration, memory loss, unstable gait and balance, weakness in extremities and asthma.<sup>10</sup> Dr. Suber, after examining claimant, sent claimant to the hospital to be evaluated. Claimant entered the hospital on June 26 and was discharged on June 27, 2009.<sup>11</sup> Claimant was admitted to the hospital due to sepsis/encephalopathy due to urinary tract infection.<sup>12</sup> The final diagnoses reflected in the hospital records were sepsis/encephalopathy due to urinary tract infection; hypercalcemia due to dehydration; dehydration; possible heat stroke/exhaustion prior to admission; hypothyroidism; essential hypertension; chronic back pain; and history of nephrolithiasis.<sup>13</sup>

Claimant had seen her personal physician for urinary tract infections before June 22, 2009.<sup>14</sup>

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<sup>5</sup> *Id.*, at 10.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, at 11.

<sup>8</sup> *Id.*, at 13.

<sup>9</sup> Claimant's regular physician, Dr. Dan Severa, was unavailable; hence, Dr. Suber saw claimant on June 26.

<sup>10</sup> P.H. Trans. (April 20, 2010), Cl. Ex. 3.

<sup>11</sup> P.H. Trans. (Oct. 20, 2009), Resp. Ex. C.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at 35.

At the request of respondent and its insurance carrier, claimant saw Dr. John W. Weigel, a urologist, for an examination on September 22, 2009. Dr. Weigel opined that the claimant's heat exposure on June 22, 2009, did not cause urological complication and although he noted the importance of adequate fluid intake and the ability to use restroom facilities, he imposed no restrictions from a urological standpoint.

A court-ordered independent medical evaluation (IME) was performed by Dr. Kathryn A. Hedges on January 19, 2010. Dr. Hedges opined, "I think at best we would be able to call her diagnosis heat exhaustion."<sup>15</sup> Dr. Hedges also recommended neuropsychological testing for the claimant.

Subsequent to the June 2009 hospitalization, claimant continued to be treated for conditions suffered on June 22, 2009, by Dr. Severa and Family Medicine Associates, P.A. During a July 13, 2009 appointment, a neurological consultation was recommended. As a result, claimant saw a neurologist in August 2009.<sup>16</sup> Dr. Severa opined that dehydration would impact a urinary tract infection. He also indicated on March 12, 2010, that claimant could not drive due to random dizzy spells, that she was easily distracted and confused and that she did not complete adult daily living tasks several days a week.<sup>17</sup>

On February 25, 2010, following the recommendation of Dr. Hedges, the ALJ ordered an IME by Dr. James Eyman. Dr. Eyman was ordered to provide the neuropsychological testing recommended by Dr. Hedges. It is unclear from the record whether the tests have been conducted. Nonetheless, no report from Dr. Eyman is in the record.

The medical bills for services provided to the claimant by Lawrence Memorial Hospital<sup>18</sup> are disputed by the respondent. Respondent alleges the bills relate to urinary tract infections that are not related to the occupational heat exposure. An outstanding balance from the hospital bills has not been paid and a debt collector has attempted to collect the debt from the claimant.

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<sup>15</sup> Hedges Report at 5.

<sup>16</sup> Results of the examination are not in the record. However, Dr. Hedges reviewed the records of this examination.

<sup>17</sup> P.H. Trans. (April 20, 2010), Cl. Ex. 3.

<sup>18</sup> *Id.*, Cl. Ex. 1.

Likewise, an outstanding balance from the medical bills provided claimant by Family Medicine Associates, P.A.<sup>19</sup> has not been paid. And the respondent disputes the bills. The respondent first alleges that claimant's personal health insurance carrier has paid for some of the services provided. Second, respondent alleges the services provided claimant were not related to the work-related injury.

The ALJ ordered:

Outstanding balance of medical bills ordered paid per claimant's exhibits one and two. Claimant is held harmless for remaining portion of the medical bills.<sup>20</sup>

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only allegations that an administrative law judge exceeded his or her jurisdiction.<sup>21</sup> This includes review of the preliminary hearing issues listed in K.S.A. 44-534a(a)(2) as jurisdictional issues, which are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment, (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>22</sup>

#### Temporary Total Disability

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an administrative law judge has jurisdiction to determine at a preliminary hearing. Therefore, this Board Member concludes the ALJ did not exceed his jurisdiction in determining the claimant was temporarily and totally disabled.

#### Maximum Compensation

The Kansas Workers Compensation Act states that the maximum compensation rate for temporary total disability compensation shall not exceed 75 percent of the state's

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<sup>19</sup> *Id.*, Cl. Ex. 2.

<sup>20</sup> ALJ Order for Compensation (Apr. 21, 2010).

<sup>21</sup> K.S.A. 2009 Supp. 44-551.

<sup>22</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

average weekly wage.<sup>23</sup> The maximum compensation rate for the June 22, 2009 incident was \$529 per week. The ALJ did exceed his authority in awarding benefits beyond the maximum allowed by statute. Therefore, the ALJ's order in awarding \$538.99 in weekly benefits is modified. The claimant is awarded temporary total disability compensation of \$529 per week, commencing February 26, 2010, and continuing to April 8, 2010.

#### Hold Harmless

The Kansas Workers Compensation Act (Act) grants an administrative law judge authority to issue a preliminary order for the payment of medical compensation and temporary total disability benefits.<sup>24</sup> Medical compensation involves providing the services of a health care provider as may be reasonably necessary to cure or to relieve the effects of the injury.<sup>25</sup> The ALJ had the jurisdiction to order paid the outstanding balance of the medical expenses reflected in Claimant's Exhibits 1 and 2 to the April 20, 2010 preliminary hearing transcript. Further, the ALJ ordered the claimant be held harmless for remaining portions of the medical bills. The question is whether the ALJ had the authority to so order. It would appear the ALJ was attempting to protect the claimant from debt collectors acting on behalf of Lawrence Memorial Hospital and Family Medicine Associates, P.A. The Act does protect claimants from medical creditors by barring creditors from commencing a collection action in the Kansas courts while a workers compensation claim is pending.<sup>26</sup> However, the ALJ's order can arguably be read to apply to non-parties to a workers compensation proceeding. In this regard the ALJ's order is too broad and, consequently, the ALJ exceeded his jurisdiction. The ALJ's order to hold claimant harmless from non-party medical creditors is vacated. However, this Board Member respects the ALJ's attempt to protect claimant from the private insurance carrier's request for payment. It is suggested the ALJ consider ordering the workers compensation insurance carrier to pay the private insurance carrier for the medical expenses reflected in Claimant's Exhibits 1 and 2 to the April 20, 2010 preliminary hearing transcript.

#### Arising out of and in the Course of Employment

In order for a claimant to collect workers compensation benefits he or she must suffer an accidental injury that arose out of and in the course of his or her employment. The phrase "out of" employment points to the cause or origin of the accident and requires

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<sup>23</sup> K.S.A. 44-510c(b)(1).

<sup>24</sup> K.S.A. 44-534a(a)(2).

<sup>25</sup> K.S.A. 2008 Supp. 44-510h.

<sup>26</sup> K.S.A. 44-510j(h).

some causal connection between the accidental injury and the employment. An injury arises “out of” employment when it is apparent to the rational mind, upon consideration of all circumstances, that there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment.<sup>27</sup>

At this juncture in the proceeding, this Board Member agrees with the ALJ that the claimant has sustained her burden of proof that she sustained accidental injuries arising out of and in the course of her employment with respondent. Respondent requested claimant seek medical treatment after the incident on June 22, 2009. Claimant’s personal physician, hospital physicians and Dr. Hedges all opined claimant suffered heat exhaustion or illness or possible heat exhaustion. The heat exhaustion caused an overnight stay in the hospital.

The ALJ did not exceed his jurisdiction by ordering the payment of medical bills sustained by the claimant for services provided by Family Medicine Associates, P.A. and at the Lawrence Memorial Hospital.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>28</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order for Compensation of ALJ Brad E. Avery dated April 21, 2010, is modified in part, vacated in part and affirmed in part. The temporary total disability compensation rate is modified to \$529 per week. The ALJ’s order to hold claimant harmless from non-party medical creditors is vacated. The remaining portions of the Order for Compensation are affirmed in their entirety.

**IT IS SO ORDERED.**

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<sup>27</sup> *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

<sup>28</sup> K.S.A. 44-534a.

Dated this \_\_\_\_ day of August, 2010.

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CAROL L. FOREMAN  
BOARD MEMBER

c: Sally G. Kelsey, Attorney for Claimant  
William G. Belden, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge